

ATTACHMENT 1

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

**Extension of Section 272 Obligations
Of Southwestern Bell Telephone
Co. In The State of Texas**

WC Docket No. 02-112

COMMENTS OF SPRINT CORPORATION

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I. INTRODUCTION AND SUMMARY

obtained section 271(d) interLATA telecommunications service authority. Pursuant to section 272(f), SWBT's section 272 obligations in Texas will expire at that time, unless the Commission acts to extend the three year period.

From the record before the Commission, it is clear enough that section 272 safeguards remain vital in Texas. Certainly, these safeguards cannot be allowed to sunset summarily; section 272 safeguards are more critical in Texas than in the more developed New York market. SWBT retains overwhelming dominance in the Texas local exchange and exchange access markets, while competitive carriers have made only limited inroads. Dozens of CLECs in the Texas market have gone bankrupt, and competitors are seeing declines both in total access line-count and in market share. SWBT's parent, SBC Communications Inc. ("SBC"), meanwhile, is reporting strong financial results and leveraging its local market power to rapidly build a dominant position in the long distance market. It is no surprise that Texas authorities have concluded that section 272 safeguards remain necessary today. Extending section 272 safeguards is also plainly warranted given SWBT's and SBC's demonstrated abuse of market power, and given the failure of SWBT's first audit to establish compliance with section 272 and its structural separation requirements.

Sprint fully supports AT&T's Petition and urges the Commission to grant it expeditiously.

II. THE COMMISSION SHOULD EXTEND SECTION 272 SAFEGUARDS IN TEXAS.

The Commission initiated this docket in May 2002 seeking comment on (1) whether the separate affiliate and related safeguards of section 272 should sunset as provided in the statute or be extended, and (2) alternative safeguards that should apply after sunset of the section 272 safeguards.⁴ Sprint argued that because the RBOCs remain still dominant in the telephone exchange and exchange access markets and retain the ability and incentive to discriminate against non-affiliated long distance and local competitors, the section 272 safeguards must not be allowed to sunset at the end of the statutory three-year period.⁵

Rather, Sprint recommended that the Commission adopt a broad framework for determining whether to extend the section 272 requirements on an RBOC by RBOC basis. Sprint argued that, at a minimum, the following conditions be met before the Commission considered the sunset of the safeguards for any particular RBOC: (1) the Commission has adopted special access and UNE performance measurements and enforcement measures; (2) three years have elapsed from the date on which the RBOC receives section 271 authorization in the last of its ILEC states; and (3) the Commission has concluded, based on the results of two biennial audits for each state in which the RBOC has received section 271 authorization, that the RBOC is in compliance with its section 272 obligations.

⁴ *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Notice of Proposed Rulemaking, 17 FCC Rcd 9916 (2002). ("272 Sunset Proceeding").

⁵ Comments of Sprint Corporation filed August 5, 2002 in the *272 Sunset Proceeding*.

A. Section 272 Safeguards Must Not Be Allowed to Sunset Summarily in the Texas Market.

Regrettably, the Commission did not adopt Sprint's recommendation.⁶

Surprisingly, the Commission allowed the section 272 safeguards imposed on Verizon in New York to sunset, not by an Order, but by a Public Notice announcing that sunset occurred by "operation of law."⁷ In doing so, the Commission failed to undertake its responsibility for assessing the impact of sunset on the nascent state of competition in that state. Despite concerns of three Commissioners, it failed to provide any analysis of a detailed record in which not only every competitive carrier but every commenting state commission and ratepayer advocate insisted that section 272 requirements should be extended – including those applicable to SWBT in Texas.

Commissioners Adelstein and Copps acknowledged the flaws in the

Commission's action:

We dissent in part from today's decision insofar as it allows the separate affiliate requirements in Section 272 to sunset for Verizon in New York without the necessary analysis by the Commission. As the Commission stated so clearly just last week in its decision on the *SBC California 271 Order*, "our principal guarantee under the Act against improper accounting practices and cross-subsidizations is compliance with the structural and accounting safeguards of section 272." In this era of corporate governance problems and accounting depredations, we find it incredible that the Commission would eliminate a tool to provide safeguards and accounting transparency without even addressing the arguments raised in the record.⁸

⁶ *272 Sunset Proceeding*, WC Docket No. 02-112, *Memorandum Opinion and Order*, FCC 02-336 (rel. Dec. 23, 2002) ("Sunset Order").

⁷ *Public Notice, Section 272 Sunsets for Verizon in New York State by Operation of Law on December 23, 2002 Pursuant to Section 272(f)(1)*, FCC 02-335 (rel. Dec. 23, 2002) ("N.Y. Sunset Notice").

⁸ *Sunset Order*, Joint Statement of Commissioner Jonathan S. Adelstein and Commissioner Michael J. Copps, Dissenting in Part.

Commissioners Adelstein and Copps also noted that Texas would be the next state where the section 272 sunset issue would arise, and that Texas cannot properly be handled in the same manner as New York:

The Texas Commission – the next State in the queue for elimination of these requirements – concluded that the sunset of the Section 272 safeguards would be “imprudent and untimely,” and “would fail to meet Congress’ objectives in implementing Section 272.” Since the State commissions are engaged in the Section 271 process from the beginning, and are our partners in the effort to carry out the directives of Congress, it is particularly important to weigh their considerations, and particularly that of the affected State, as we move to this next phase.⁹

B. Section 272 Safeguards Are More Critical in Texas Than In New York.

AT&T persuasively explains why section 272 marketplace safeguards cannot be handled summarily as in New York, and why the safeguards must be extended:

[E]ven if there could be any precedential value to the Commission’s entirely unexplained (and unjustifiable) decision not to extend the section 272 safeguards in New York, the relevant circumstances in the two states are very different. There has been much less deployment of bypass facilities by competitive carriers in Texas than in New York. Likewise, competitive carriers have won far more customers and market share in New York (already upwards of 25 percent) than in any other state; in Texas, by contrast, competitors have attained very limited and now declining market shares.¹⁰

Most commenters in the Sunset proceeding agreed that competition in New York is not yet robust enough to justify the sunset of the section 272 obligations there, but the competitive marketplace in Texas is far less developed still. Today, by any measure,

⁹ *Id.*

¹⁰ AT&T’s Petition at p. 7 (citations omitted).

SWBT remains clearly dominant in the local exchange and exchange access markets in Texas. It retains the incentive and ability to exploit that dominance to the detriment of competitors and the public interest. As Commissioners Adelstein, Copps, and Martin recognized -- and as the Texas PUC and the Texas Attorney General have all pointed out, joined by AT&T, Sprint, and virtually every other non-RBOC commenter -- the section 272 safeguards remain critical tools for regulators to detect abuse of RBOCs' dominant market power, including improper accounting and cross-subsidization.

Because of SWBT's continued overwhelming dominance in the local exchange and exchange access markets in Texas, the section 272 safeguards remain vital to restrain the RBOC's "artificial advantage" in the long distance market and to "ensure that competitors of the BOC's [long distance] affiliate have access to essential inputs, namely, the provision of local exchange and exchange access services, on terms that do not discriminate against competitors and in favor of the BOC's affiliate."¹¹

C. SWBT Remains Overwhelmingly Dominant in Texas, While Competitors Are Struggling.

Regardless of what the Commission has allowed to transpire in New York, it is imperative that the Commission retain these critical tools by extending the section 272 safeguards on SWBT in Texas. AT&T's Petition compellingly proves that SWBT in Texas is still dominant and that dominance is actually becoming stronger, while at the same time SWBT's market share in Texas in interstate interLATA traffic is also growing significantly.

¹¹ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 11 FCC Rcd 21905 at ¶¶ 12-13.

AT&T's Petition notes:

According to the most recent data compiled by the Texas PUC, competitive carriers are actually losing market share and now serve less than 15 percent of lines in Texas. At the same time, scores of competitive carriers have been pushed into bankruptcy in Texas. In stark contrast, SWBT has steadily increased its interLATA long distance market share to more than 35 percent.¹²

That SWBT is dominating the Texas telecommunications market certainly should be a source of great concern to regulators and the industry alike. It should hardly be a surprise, however. SBC's public releases have long foretold this story:

Winback percentages also were up substantially compared with the first quarter a year ago – more than 30 percent in both consumer and business segments. In regions where SBC provided long distance winback percentages in the first quarter were above 50 percent in both consumer and business segments

...

SBC delivered solid progress in interLATA long distance in the first quarter [2002]. The company accelerated line growth and made excellent progress in its two newest long-distance states, Missouri and Arkansas, both launched in the fourth quarter of 2001. In the first quarter of 2002, SBC:

- *Added 451,000 long-distance lines, up from 277,000 added last quarter and its best quarterly total in the past year. SBC now serves more than 5.3 million lines in the six states where it has authority to provide long-distance services, up from 3.6 million a year ago.*
- *Achieved consumer line penetration of more than 30 percent in its five SBC Southwestern Bell states, even though two of the five SBC states, Missouri and Arkansas, are recent launches and are early in their penetration trajectory.*

¹² AT&T's Petition at pp. 4-5, citing the Texas PUC's *Report to the 78th Texas Legislature: Scope of Competition in Telecommunications Markets of Texas* (Jan. 2003) ("Texas Competition Report") (citations omitted).

- *Won and retained high-usage customers.* Average usage levels for SBC's long-distance customers in its Southwestern Bell states are higher than the industry average in those states. This reflects effective marketing and SBC's strong emphasis on bundling long distance with local calling services and features. The percentage of SBC long-distance customers in these markets on bundled plans has risen over the past year. In both consumer and business segments, more than half of the subscribers who selected SBC's long-distance service in the first quarter did so as part of a bundled offering.¹³

SBC's glowing news has only brightened further with the passage of time. In a just-released statement, SBC touted: "We had our best-ever quarter for DSL and long-distance subscriber growth, and we expect continued strong results from innovative product bundles and an aggressive marketing campaign."¹⁴ SBC explained that, as of April 21, SBC had gained – virtually overnight – a retail long distance share of 13 percent in California, and in Texas and those other states where SBC provides long distance "at the end of the first quarter [2003], SBC's retail voice line penetration had reached 43 percent overall and about 50 percent for consumer lines."¹⁵ SBC emphasized how its "access-line strategies" are based on leveraging its position as dominant local exchange carrier, and trumpeted its success in winning back customers from struggling competitors.¹⁶

- SBC's consumer winback rate improved 500 basis points versus the fourth quarter of 2002 to 40 percent. This marks SBC's third consecutive quarter with a strong sequential improvement in its consumer winback percentage.

¹³ SBC Investor Briefing, No. 229, Apr. 18, 2002, pp. 3 & 7.

¹⁴ SBC Investor Briefing, No. 235, Apr. 24, 2003, at p. 1.

¹⁵ *Id.* at p. 7. Moreover, SBC accomplished these market gains without any significant investment in its own long distance facilities.

¹⁶ *Id.* at p. 6.

- SBC's business winback rate topped 50 percent, consistent with recent quarters.

SBC's announcement also showed it lost fewer retail lines to CLEC competitors and gained net market share from its few local competitors, even while reporting a \$5 billion profit and dramatically expanding its long distance market share.¹⁷

In contrast, the Texas CLEC industry and competitive long distance carriers are struggling through an extraordinary downturn. The competitive industry plainly is in a troubled, fragile state. The Texas PUC showed its deep concern for the state of the competitive industry in its Texas Competition Report. Dozens of Texas CLECs have gone bankrupt, as have several competitive IXC's.¹⁸ All non-RBOC carriers have seen drastic declines in their market capitalization.¹⁹ Smaller carriers, in particular, now find the financial markets closed to them, and what little funding is available for any carriers is now high-priced. And the Texas PUC recorded a significant decline in CLEC access lines and market share in the six months up to June 2002 -- unlike New York State, where it noted CLECs held their ground and enjoy far higher market share.²⁰ Under these conditions, the Commission certainly should not be entertaining a roll-back of such a key marketplace protection for the state.

¹⁷ See *id.* at pp. 6 and 12.

¹⁸ See Texas Competition Report at p. 17 and Appendix G.

¹⁹ *Id.* at p 7 and Appendix B.

²⁰ *Id.* at pp. 19, 20. See also Appendix H, Table 22.

D. Texas Authorities Have Concluded That Section 272 Safeguards Remain Necessary in Texas.

AT&T's and Sprint's concerns over SWBT's continued, and increasing, dominance, are shared by the Texas PUC:

The Texas PUC believes that although some progress has been made toward leveling the field, SWBT's continued dominance over local exchange and exchange access services still hinders the development of a fully competitive market, especially given the current status of the financial markets, competitive local exchange carriers' (CLECs) access to capital, and the bankruptcy of many competitive carriers. Thus SWBT retains both the incentive and ability to discriminate against competitors and to engage in anti-competitive behavior.²¹

By all accounts, SWBT is still dominant in the Texas local exchange and exchange access markets and is rapidly increasing its long distance market share.²² As previously urged by the Texas PUC, and as powerfully and persuasively argued by AT&T in the instant petition, now is not the time to allow the critically important section 272 safeguard to sunset in Texas.

E. Extension of Section 272 Safeguards Is Warranted Given SBC's and SWBT's Demonstrated Abuse of Market Power.

Commissioners Adelstein and Copps recognized that the Public Utility Commission of Texas – the authority “most familiar” with the market realities in the state

²¹ Comments of the Texas PUC, *272 Sunset Proceeding*, August 5, 2002, at pp. 2-3 (citations omitted, emphasis added).

²² SBC may also be on the verge of gaining an even greater ability to retain, and increase, its dominant market share. Legislation has passed the Texas state house and is awaiting signature by the governor which would give SWBT flexibility in pricing to retain and to win back customers from competitors. Texas S.B. No. 732

-- concluded it would be "premature" to allow section 272 safeguards to sunset.²³ They also noted that the Commission had not completed its order on performance measures and cited understandable public doubts about the sufficiency of faith in corporate accounting.

The Public Utility Commission of Texas recounted in the Sunset proceeding that, more than two years after receiving section 271 approval, SWBT continues to fail to meet performance measures, having committed more than 5,254 violations between November 2001 and April 2002 alone, including repeated instances of discrimination.²⁴ It concluded:

Until these matters [special access performance measures] are resolved, the separate affiliate requirements of section 272 remain the most effective means of assessing the BOCs' compliance with the statutory obligation to not discriminate against other entities in favor of its affiliates.²⁵

The Texas Attorney General likewise noted in its Sunset comments that SBC and the other RBOCs "have all been fined for a list of abuses and violations of their statutory and regulatory obligations -- all of which occurred during a period in which the RBOCs must have been particularly sensitive to the need for compliance."²⁶

²³ N.Y. Sunset Notice, Dissent of Commissioners Adelstein and Copps, at p. 1.

²⁴ Texas PUC Comments at 7. The commission added "that there does not appear to be a significant trend downward" in SWBT violations.

²⁵ *Id.*

²⁶ Texas Attorney General Reply Comments at 3 (noting also that Verizon and other BOCs "have used every means to slow or prevent the development of robust competition").

Indeed, SBC's record of noncompliance with market-opening requirements, accounting guidelines, and competition safeguards is the worst in the RBOC industry. SBC has been assessed fines, penalties, commitments, or refunds of over \$1.1 *billion* for violations of statutory obligations, merger conditions, and conditions of section 271 approvals at both state and federal levels.²⁷ SBC has been repeatedly penalized, in particular, for its continuing unwillingness to meet wholesale services standards that are essential to competition. Since adoption of the SBC/Ameritech Merger Order,²⁸ three and a half years ago, SBC has failed to meet wholesale performance requirements every single month, paying an average monthly fine of nearly \$3 million.

Moreover, those performance violations have not been accurately or completely reported by SBC. Independent auditors, reviewing SBC's 2001 performance reporting under market-opening conditions of the Merger Order, reported on August 30, 2002 that SBC's monthly performance filings contained repeated errors, misclassification of data, and omissions which affected SBC's calculations. SBC subsequently acknowledged that its reporting for 2002 and early 2003 contained similar irregularities. On March 30, 2003, SBC was obliged to enter a consent decree to address the chronic reporting

²⁷ SBC companies have been fined, ordered to make refunds, or compelled to enter consent decrees in more than 160 instances since September 1996, affecting every RBOC state in its territories, including Texas. The competition advocacy group, Voices for Choices, maintains a running tally of these penalties. See "Bell Fine Watch" at <http://www.voicesforchoices.com>.

²⁸ *Application of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations*, Memorandum Opinion and Order, 14 FCC Rcd. 14712 (1999).

deficiencies noted by the auditors-- and pay a \$250,000 penalty -- as part of an Enforcement Bureau investigation of these accounting irregularities.²⁹

Other evidence of SBC misconduct in just the last year and a half includes investigations into inaccurate information submitted in affidavits in two separate section 271 applications to provide long distance service;³⁰ intentional violations of an Enforcement Bureau order directing the company to provide sworn verification of the truth and accuracy of its answers to a Bureau letter of inquiry; relating to SBC's provisioning and maintenance of digital subscriber line service;³¹ 24 violations of the Commission's collocation rules;³² violation of reporting requirements under the Merger Order;³³ a fine of \$6 million (the statutory maximum for the five violations) for failure to comply with its obligation to offer the shared transport UNE in the former Ameritech states on terms at least as favorable as those offered to telecommunications carriers in

²⁹ *SBC Communications Inc.*, DA 03-825 (rel. Mar. 20, 2003) (consent decree imposing \$250,000 penalty and mandating a formal compliance plan to remedy system misreporting of wholesale performance measures required under market-opening conditions in the SBC/Ameritech Merger Order).

³⁰ *SBC Communications*, File Nos. EB-01-IH-0339 and EB-01-IH-0453, *Order* rel. May 28, 2002 (FCC 02-153). The Commission was investigating whether SBC had violated sections 251 and 271 of the Act, and the terms of the June 1999 SBC/SNET Consent Decree, by providing inaccurate information about (1) competing carriers' ability to access loop qualification information from SBC, and (2) a competing carrier's difficulties obtaining electronic access to SBC's LMOS system. SBC was fined \$3.6 million.

³¹ *SBC Communications, Inc.*, EB-01-IH-0642, *Forfeiture Order* rel. Apr. 15, 2002 (FCC 02-112), at para. 3. SBC stated that it had "intentionally refused to provide the sworn statement and that it did not intend to comply with that aspect of the Bureau's Order." It was fined \$100,000.

³² *SBC Communications, Inc.*, EB-00-IH-0326a, *Order on Review* rel. Feb. 25, 2002 (FCC 02-61).

³³ *SBC Communications, Inc.*, EB-00-IH-0432, *Order on Review* rel. May 29, 2001 (FCC 01-184).

Texas,³⁴ and federal and state penalties every month for failing to meet wholesale performance standards. AT&T's petition catalogues a variety of "anticompetitive strategies to harm long distance competition," among them "discrimination in provisioning of access to their essential network facilities, abuse of the PIC change process, discriminatory growth tariffs, and engaging in improper inter-affiliate transfers," as well as "price squeezing" by marketing intrastate long distance services at rates below costs, in violation of Section 272(e).³⁵

Given this evidence – discrimination against wholesale competitors, accounting irregularities, and violations of performance measures and market-opening requirements – it is clear enough that section 272 safeguards remain critical in Texas.

F. The Commission Should Extend Section 272 Safeguards Until Audits Establish SWBT's Compliance.

Section 272(d) mandates a detailed biennial audit of RBOC compliance with section 272 and related Commission regulations after any grant of section 271 authority. 47 U.S.C. Section 272(d). Congress imposed this requirement to provide a means for assessing, inter alia, whether the RBOC has been misallocating costs, discriminating in favor of its affiliate, or otherwise exploiting and abusing its dominance of local exchange and exchange access markets. Naturally, Congress envisioned that only after audits established compliance with section 272 requirements would an RBOC be relieved of those obligations.

³⁴ *SBC Communications, Inc.*, EB-01-IH-0030, *Notice of Apparent Liability for Forfeiture* rel. Jan. 18, 2002 (FCC 02-7).

³⁵ See AT&T's Petition at 14 and AT&T 272 Comments at 21-44.

In comments filed with the Commission, the Texas PUC underscored the critical “purpose of the Section 272 audit ... to evaluate whether SBC is complying with the requirements of Section 272, the Accounting Safeguards Order, and the Non-Accounting Safeguards Order.”³⁶ Because SBC is the “dominant provider[] of local-exchange and exchange-access services” it has “incentive to allocate improperly to its regulated core business costs that would be properly attributable to its competitive ventures such as its Section 272 Affiliates,” and “to discriminate in provid[ing] exchange-access services and facilities that its affiliate’s rivals need to compete in the interLATA and information-services markets.”³⁷

SBC purported to undertake an audit of SWBT’s first year’s compliance with the structural separation safeguards, but the audit failed to show compliance.³⁸ SWBT drew out the process, resisted third party review, used an auditor whose independence the Texas PUC has questioned, limited the audit’s scope, and provided an auditor’s report that does not purport to opine on, much less confirm, SWBT’s adherence to section 272 requirements.

The Texas PUC criticized SWBT’s repeated failure to meet agreed deadlines for the audit, which prevented the Federal/State Joint Oversight Team from reviewing and

³⁶ Comments of the Public Utility Commission of Texas, Section 272 Biennial Audit Procedures, CC Docket 96-150, filed 1/30/03, at p. 7. (“Tx PUC Audit Comments”)

³⁷ *Id.*, at p. 7 (citations omitted).

³⁸ SBC filed a redacted version of its biennial audit for Texas only on January 28, 2002. See *SBC Communications Inc. Report of Independent Accountants on Applying Agreed-Upon Procedures*, CC Docket No. 96-150, filed January 28, 2002. On February 12, 2002, AT&T requested an unredacted version of the report, and on March 8, 2002, SBC filed comments opposing AT&T’s request. This matter remains unresolved.

discussing audit information,³⁹ and SBC's "lengthy delays in the audit process [that] led to the full Joint Oversight Team being unable to properly evaluate some of the data."⁴⁰ SBC's further "lengthy delays in release of the final audit report *frustrated the very purpose of Section 272* by hampering the Texas PUC's as well as the FCC's ability to timely determine whether SBC is complying with its requirements."⁴¹

The accuracy, integrity, and independence of the audit were insufficient. The Texas PUC and the Federal/State Joint Oversight Team concluded that this limited review was "incomplete," omitted many "types of transactions that implicate the safeguards contained in Section 272 of the Act and related FCC rules," "provided insufficient information," and had "clear flaws."⁴² The Texas PUC also cited repeated, and unacceptable, shortcuts and shortcomings in the audit. For example, the Texas PUC noted that, even in the auditor's limited sampling, discrepancies appeared "between rates charged to the section 272 affiliate and rates charged to ... unaffiliated carriers." The Texas PUC concluded that "the auditor should have investigated this matter further," but did not. The auditor's examination "could have and should have been broader."⁴³

The Texas PUC also found it "significant" that

the auditor ... was not asked to express an opinion on whether SBC was in compliance with the requirements of Section 272. This was true as well with respect to each Objective of the audit. No conclusions were drawn. The auditor simply summarized, very briefly, the procedures followed with respect to each Objective.⁴⁴

³⁹ Comments of the Texas PUC on the Audit Report of SBC, at p. 7.

⁴⁰ *Id.* at p. 8.

⁴¹ *Id.* (*emphasis added.*)

⁴² *Id.* at p. 2.

⁴³ *Id.* at p. 11.

⁴⁴ *Id.* at p. 6.

The auditor even cautioned that it did not establish that SBC had complied with its section 272 obligations. As the Texas PUC remarked, the auditor stated:

We were not asked to, and did not conduct an examination, the objective of which would be the expression of an opinion on SBC's compliance with the Section 272 Requirements. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.⁴⁵

The Texas PUC also voiced its "concerns about the 'independence' or neutrality of the auditor selected," given that the firm counts SBC as one of its most lucrative accounting clients.⁴⁶ The fact that the audit was staffed by individuals from an "office located one block from SBC's corporate headquarters" also raised a "question" about likely bias. "Given the many and the very public" accounting scandals – one of the largest of which involves an RBOC – "it is especially important for the FCC and the states to be comfortable that the auditor selected be entirely independent of SBC and unbiased."⁴⁷

As a result of these serious, and fundamental, deficiencies, the Texas PUC concluded that SWBT's audit failed to show "whether SBC has met all the requirements regarding the interactions between itself and its Section 272 affiliates."⁴⁸ Commissioner Martin likewise recognized that it was "odd" for the Commission to have allowed Verizon's section 272 obligations to sunset automatically in New York when the

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at p. 5 (footnote omitted.)

statutorily-required audit process had not yet been completed. Sprint agrees with AT&T that the Commission's action on New York was mistaken. In light of the more serious and explicit problems cited by the Texas PUC, it would be all the more improper for the Commission to allow SWBT's section 272 obligations to sunset in Texas until proper audits have demonstrated actual compliance, as Congress surely intended.


III. CONCLUSION

Competition in Texas is in its infancy, SWBT remains overwhelmingly dominant in the local exchange and exchange access markets in the state, and SBC has a shameful record of discrimination, cost misallocation, and other competitive abuses. The section 272 safeguards therefore are as important today as they were when SWBT first received in-state long distance authority.

AT&T has presented a compelling case for an extension of section 272 safeguards in Texas. The Commission should act promptly to grant the Petition.

Respectfully submitted,

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